

TITLE 6

Public Works

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CHAPTER 1

Board of Public Works; Grades

SEC. 6-1-1 RULES BY BOARD OF PUBLIC WORKS.

In addition to the rules and regulations contained in this Chapter for the construction, use and repair of streets, alleys, sidewalks, and public places, the Board of Public Works shall prepare, promulgate, and enforce such other rules, regulations, and conditions not inconsistent with this Chapter as may be deemed useful for the preservation of streets, alleys, sidewalks, and public places.

SEC. 6-1-2 ESTABLISHMENT OF GRADES.

- (a) **GRADES TO BE ESTABLISHED.** The grade of all streets, alleys and sidewalks shall be established by resolution by the Common Council and the same recorded by the Department of Public Works. No street, alley or sidewalk shall be worked until the grade thereof is established. In all cases where the grade of sidewalks shall not have been specifically set by ordinance, the sidewalks shall be laid to the established grade of the street. All such grades heretofore established are hereby confirmed. The standards will be based on width, and right-of-way width, all in conformity with good and normal construction practices.
- (b) **NEW SIDEWALK GRADE.** Whenever a street shall be improved for the first time or the grade thereof changed and the street improved so as to conform to the new grade, the grading of the sidewalk shall be considered a part of the improvement, shall be let by contract with the other work of improving such street, and the expense thereof shall be provided for and borne in all respects like that of improving the street, but the construction shall be done by the owners of the abutting lots or parcels of land or at their expense as hereinafter provided. Before such construction is commenced by the owners of the abutting lots or parcels of land, the Director of Public Works shall, upon application by the respective owners for a sidewalk grade, cause such sidewalk grade to be established.

State Law Reference: Section 62.14(7) and 62.16, Wis. Stats.

SEC. 6-1-3 ALTERATION OF GRADE PROHIBITED.

No person shall alter the grade of any street, alley, sidewalk or public ground or any part thereof in the City of Menasha by any means whatsoever unless authorized or instructed to do so by the Director of Public Works. All such alterations of grade shall be recorded in the office of the Director of Public Works.

SEC. 6-1-4**REGULATION AND GRADES OF UNDERGROUND UTILITIES.**

- (a) **ELEVATION.** The grade or elevation of all underground construction shall be three (3) feet below the established grade of the street, alley, park, public property or easement. The three (3) feet shall be measured between the top of the established grade and the top of the underground construction.
- (b) **APPROVAL OF LOCATION.** The location of any and all such underground construction must have the approval of the Director of Public Works.
- (c) **FILING PLANS.** Complete plans for any such construction must be filed with and be approved by the Director of Public Works before construction can begin.
- (d) **INSPECTION.** On request of the Director of Public Works, the utility company must provide opportunity for him to check any construction before it may be covered.
- (e) **CONFLICT WITH OTHER UTILITIES.** If the grade or elevation herein set for the underground construction of utilities shall, in any instance, conflict with other existing utilities, the utility shall be required to lower the elevation of its underground construction, or of the storm sewer, at the election of the Director of Public Works and in accordance with his directions and specifications.
- (f) **ESTABLISHMENT OF GRADE.** At the request of the utility company, the Director of Public Works shall, at the City's expense, give the utility company an established grade on any streets, alleys, public parks or easements where it proposes to install underground utilities.
- (g) **EMERGENCY.** In case of an emergency, when immediate action is necessary in order to protect life or property, the utility company may proceed with underground construction subject to obtaining the approval of such work by the Director of Public Works as soon thereafter as is reasonably possible.
- (h) **RESTORATION OF SURFACE.** In the event of any such underground construction, the utility company shall leave the surface of the ground, or road, in the same condition as before said work was commenced, and in the event of its failure so to do the City may proceed to place the surface of the ground or street in such condition at the utility company's expense. Such work shall comply with the provisions of Sections 6-2-3 and 6-2-4.
- (i) **NON-RELIEF FROM OBLIGATIONS.** Compliance with this Section does not relieve the utility company from any responsibility of any kind whatsoever by reason of the widening of the travel way, or any other improvements which may become necessary; nor does it relieve it from any liability of any kind or nature whatsoever. Compliance with this Section shall not relieve the utility company from the responsibility or obligation of removing, relocating or moving any of its mains, pipes or property due to the opening, widening or improving of streets, or due to any other changes which may occur by reason of which such moving, relocation or removing may be necessary.

SEC. 6-1-5**PUBLIC WORKS PROJECTS; BIDDERS PROOF OF RESPONSIBILITY.**

- (a) **BIDDERS PROOF OF RESPONSIBILITY REQUIRED.** When public works contracts are required by law, the Director of Public Works is required before delivering any form for bid proposals to require any person, partnership or corporation so bidding to submit a full and complete statement sworn to before an officer authorized by law to administer oaths of financial ability, equipment, and experience in the work prescribed in said public contract

and of such other matters as the City or Director of Public Works thereof may require for the protection and welfare of the public in the performance of said contract. Such statement shall be in writing on a standard form of questionnaire as adopted for such use by the Board of Public Works and shall be filed in the manner and place designated by the Board of Public Works not less than five (5) days prior to the time set for opening of bids. The contents of said statements shall be confidential and shall not be disclosed except upon written order of such person, partnership or corporation furnishing the same or in cases of actions against the City of Menasha by the bidders.

- (b) **PROOF OF RESPONSIBILITY, CONDITION PRECEDENT.** No bid shall be received from any person who has not submitted the sworn statement as provided in the preceding Subsection, provided, however, that any prospective bidder who has once qualified to the satisfaction of the Board of Public Works and who wishes to become a bidder upon subsequent public contracts under the jurisdiction of the same, to whose satisfaction the prospective bidder has qualified, need not again pre-qualify if less than twelve (12) months has transpired since his previous qualification. It is the intention of this Section that the information required for pre-qualification need not be submitted more than once in any twelve (12) month period.

CHAPTER 2

Streets and Sidewalks

SEC. 6-2-1 REMOVAL OF RUBBISH AND DIRT FROM SIDEWALKS.

No owner or occupant shall allow the sidewalk abutting on his premises to be littered with rubbish or dirt. If such owner or occupant shall refuse or fail to remove any such rubbish or dirt when notified to do so by the Director of Public Works, the Director may cause the same to be done and report the cost thereof to the City Comptroller who shall spread the cost on the tax roll as a special tax against the premises, pursuant to Sec. 66.60(16), Wis. Stats., or such cost may be recovered in an action against the owner or occupant.

SEC. 6-2-2 SIDEWALK CONSTRUCTION AND REPAIR.

(a) **COST OF REPAIR, MAINTENANCE OR RECONSTRUCTION.**

- (1) It shall be the policy of the City of Menasha that all reconstruction, repair or maintenance work on the existing sidewalks within the corporate limits of the City of Menasha shall be borne from the general funds and shall not be assessed against the property of the owner.
- (2) Sidewalks shall be located in such places as designated by the Board of Public Works. No person shall remove any sidewalk without the permission of the Director of Public Works.

(b) **CONSTRUCTION AND REPAIR REGULATED.** No person, whether owner, builder or contractor, shall build any new sidewalk or repair or renew, or cause to be built, repaired or renewed any existing sidewalk contrary to the provisions of this Chapter.

(c) **STATE LAW APPLICABLE.**

- (1) The Board of Public Works is empowered and directed to proceed with the construction and repair of concrete sidewalks without advertising for bids upon such work. The Board shall advertise for bids upon all materials and supplies, the estimated cost of which shall exceed Ten Thousand Dollars (\$10,000.00). Said work shall not be done on any street until specifically ordered as required by law.
- (2) In addition to the provisions of this Chapter, the provisions of Section 66.615, Wis. Stats., so far as applicable to this City, shall govern the construction, improvement and repair of sidewalks.

(d) **SPECIFICATIONS.** Sidewalks shall be constructed in accordance with the specifications for standard sidewalks adopted by the Board of Public Works and on file with the Director of Public Works unless such ordinance or resolution establish different standard therefor. The standard width of sidewalks on residential streets shall be four (4) feet unless otherwise directed by the Board of Public Works. Sidewalks in commercial areas, or areas surrounding schools and churches and other areas where large groups of people congregate, shall have a minimum width of five (5) feet or as otherwise directed by the Board of Public Works.

(e) **FAULTY WORK CONDEMNED.**

- (1) Notice to Remove. Whenever any person, firm or corporation shall repair or cause to be repaired an existing sidewalk contrary to the terms of this Chapter, or shall construct or cause to be constructed a sidewalk of substantially different material than as herein provided, or in such other manner that the same cannot be made to

conform to the requirements of this Chapter or to any requirement of the Board of Public Works without completely reconstructing such sidewalk or some part thereof, or is defective, insufficient or dangerous to travel, the Board of Public Works is empowered to and shall condemn such sidewalk or such part thereof and shall give notice in writing to such person, firm or corporation of such action and that within ten (10) days after receipt of such notice the concrete sidewalk or part thereof shall be removed and rebuilt in accordance with the terms of this Chapter.

- (2) City May Repair; Cost. In case such person, firm or corporation shall fail or neglect for twenty (20) days after the service of such notice to comply with the same, the Board of Public Works shall proceed in the manner provided by law to cause such sidewalk or part thereof to be removed and a new concrete sidewalk to be built in place thereof and the cost of such work shall be charged to the abutting property, if the cost cannot be recovered from the contractor.
- (3) Rebuilding Existing Sidewalks. Whenever any existing sidewalk being of other material than concrete shall hereafter be condemned by the Board of Public Works, the sidewalk shall be repaired or reconstructed of concrete in the manner hereinafter prescribed in this Chapter.

(f) **PERMITS FOR SIDEWALK CONSTRUCTION.**

- (1) Permit Required; Application. No sidewalk shall be constructed by any person, firm or corporation without an application in writing made and filed with the Board of Public Works for permission to construct the same, to be signed by the owner of the premises, his agent or contractor, stating the length of said proposed walk, any openings to be left therein or thereunder and the means proposed to cover or protect the same, and designating the premises in front of which it is proposed to construct the walk, and the nature of the principal buildings thereof.
- (2) Issuance of Permit.
 - a. Upon the filing of such application, the Board of Public Works shall determine the width of the walk, the thickness of the several sections thereof, and information relating to any openings in or under the walk and the means of covering or protecting the same, and shall thereupon issue a permit in writing for the construction of the walk.
 - b. On all streets improved with a permanent curb the said permit shall state the distance from the curb to the inner line of the proposed walk and any direction that the Director of Public Works may deem necessary to give concerning the grade thereof. Upon all other streets the Director of Public Works shall, upon the granting of the permit, determine the lines and grades of such walk and cause proper stakes to be set to designate the same on an offset line, and until such stakes are so set the construction of such walk, except the excavation therefor, shall not be commenced.
- (3) Lights and Barriers. Any person who shall construct or cause to be constructed any concrete sidewalks, including all contractors performing or supervising such construction, shall cause sufficient barriers to be erected and maintained during the period of construction, and a red light at each end of the sidewalk to be placed and kept burning during each night of such period to the satisfaction of the Board of Public Works.

(g) **DAMAGE TO SIDEWALK.**

- (1) No person shall, without authority in writing from the Director of Public Works, interfere with, alter the position or level of, remove or destroy any line or grade stakes set by the Director of Public Works.
- (2) No person shall injure or tear up any side or crosswalk or shall injure or dig any holes, ditch, or drain in or across any street, highway, lane or alley without first having obtained the consent of the Common Council. Violations shall be subject to a forfeiture hereinafter set forth in this Code.
- (3) No person shall pass over or upon any cement sidewalk or crossing while the same is in the process of construction or until the same shall become thoroughly dry and hardened. Barriers shall be placed around new sidewalks by workers constructing the same to prevent persons from passing over or upon the sidewalk under construction. It shall be unlawful for any person or corporation to remove said barriers except those having lawful authority so to do.
- (4) It shall be unlawful for the owner as well as any other person or corporation to at any time mark, mar, deface, injure, mutilate, destroy, print or paint any letters names or characters whatsoever on any cement sidewalk or crossing now or hereafter to be built and constructed in the City of Menasha.

(h) **SIDEWALK CONSTRUCTION REQUIRED.**

- (1) When Fifty Percent (50%) of Each Side of the Block Improved or Developed. Whenever the owner of fifty percent (50%) of the lineal feet of property on any side of any individual block have had improvements constructed thereon, the Common Council shall order as soon as feasible sidewalks to be built to serve abutting property owners. The Common Council reserves the right to order sidewalk construction in certain areas of the City, where sides of blocks are not fifty percent (50%) completed, and where the Board of Public Works finds a need not limited to the safety factor above.
- (2) When Two-thirds (2/3) of Block Completed. The owner of any property in the City of Menasha shall cause a walk to be constructed adjacent thereto in conformity with the provisions of this Section in the event the City block upon which the property abuts has sidewalks constructed thereon over more than two-thirds (2/3) of the length of said block.
- (3) Sidewalks shall be mandatory on both sides of all arterial and collector streets as listed in the "State Mileage Certification Report." Installation shall take place at the time the streets are constructed to urban sections (curb and gutter, storm sewer, etc.).
- (4) Sidewalks shall be mandatory on streets where the net density on the abutting properties is greater than 3.5 units per acre and average daily traffic is greater than 500 vehicles per day.
- (5) The minimum vehicle volume warrant for installation of sidewalk shall be 500 cars per day.
- (6) Nothing in the above provisions providing for the installation of sidewalks in the existing development shall prevent the Board of Public Works from requesting sidewalk construction if traffic engineering or any combination of pedestrian counts and traffic volumes demonstrate a hazardous condition which would warrant sidewalk installation.
- (7) Sidewalks shall be mandatory on both sides of the street on all plats submitted for approval to the Plan Commission. Exceptions may be granted only in the following instances:
 - a. The owner of property subject to the provisions of subsections (h)(1) and (2)

- shall have the right to petition the Common Council for a variance or exceptions from the terms of said provisions.
 - b. Industrial and commercial subdivisions;
 - c. In residential cul-de-sac streets (less than 500 feet in length) and other streets of limited continuity where the density of development is less than 6 units per acre.
 - d. Neighborhood residential streets where topography, trees, insufficient right-of-way, or other unique circumstances make placement of walks on one or both sides of the street impractical and where the absence of such walks will not substantially interrupt pedestrian flow within the block or to parks, schools, or other major pedestrian attractors.
 - e. Where there is a dedication of a pedestrian right-of-way or other alternate means of pedestrian circulation.
 - f. On neighborhood residential streets, upon request of the subdivider, where proposed net density is less than 3.5 units per acre and average daily traffic would not be such to cause sidewalk installation based on traffic engineering warrants.
- (8) Nothing in this ordinance prohibits the installation of sidewalks upon request of the adjoining property owners.
- (i) **UNSAFE SIDEWALKS.** The Common Council may at any time, by ordinance or resolution, order any sidewalk which is unsafe, defective, or insufficient, to be removed and replaced with a sidewalk in accordance with the standard specifications provided for in this Section.
- (j) **ILLEGAL SIDEWALKS.** No sidewalk which shall be constructed contrary to the provisions of this Section shall be considered a legal sidewalk and the same may be ordered to be replaced with a legal sidewalk and one which is in conformity with this Section, the same as if no sidewalk whatever had been built or constructed in the place where any such sidewalk is located.

State Law Reference: Section 66.615, Wis. Stats.

SEC. 6-2-3 EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND GROUNDS.

- (a) **PERMIT REQUIRED.**
- (1) No person, partnership or corporation, or their agents or employees or contractors, shall make or cause to be made any opening or excavation in any public street, public alley, public way, public ground, public sidewalk or City-owned easement within the City of Menasha without a permit therefor from the City Department of Public Works.
 - (2) A permit is required prior to performing any of the following work in the street right-of-way:
 - a. Excavation
 - b. Barricading
 - c. Construction of all types
 - (3) Permits shall be obtained from the City Engineering Department. Such permits shall be issued upon filing an approved plan or diagram or signed statement detailing the location and nature of the street opening and the payment of a fee hereinafter listed.

For emergency work, the required permit shall be obtained the next following business day.

- (b) **EXCEPTION.** The provisions of this Section shall not apply to City excavation work done, including work by City utilities, under the direction of the Director of Public Works.
- (c) **VALIDITY OF PERMIT.** Permits shall be valid for a period of thirty (30) days from the date of approval, except as provided herein for pavement replacement. No permit fees shall be paid by an agency of the City.
- (d) **CITY STANDARDS; FEES.**
 - (1) City Standards. All street work shall be performed in accordance with the current standard specifications for street openings. Any damaged curb and gutter, sidewalk or grass-covered area shall be restored to the condition prior to damage.
 - (2) Fee. The fee for a street opening permit shall be Ten Dollars (\$10.00). The fee for an annual street opening permit shall be One Hundred Dollars (\$100.00). Permit fees shall be paid to the City Treasurer who shall issue his receipt therefor.
- (e) **INSURANCE REQUIRED.** A permit shall be issued only upon condition that the applicant submit to the Director of Public Works satisfactory written evidence that applicant has in force and will maintain during the time the permit is in effect public liability insurance of not less than \$500,000 per one (1) person, \$500,000 for one (1) accident and property damage coverage of not less than \$500,000. The policy shall name the City of Menasha as the third party insured.
- (f) **BOND.**
 - (1) Before a permit for excavating or opening any street or public way may be issued, the applicant must sign a statement that he will indemnify and save harmless the City of Menasha and its officers from all liability for accidents and damage caused by any of the work covered by his permit, and that he will fill up and place in good and safe condition all excavations and openings made in the street, and will replace and restore the pavement pursuant to Section 6-2-4 over any opening he may make as near as can be to the state and condition in which he found it, and keep and maintain the same in such condition, normal wear and tear excepted, to the satisfaction of the Director of Public Works for a period of one (1) year, and that he will pay all fines of forfeitures imposed upon him for any violation of any rule, regulation or ordinance governing street openings or drain laying adopted by the Common Council and will repair any damage done to existing improvements during the progress of the excavation in accordance with the ordinances, rules and regulations of the City. Such statement shall also guarantee that, if the City shall elect to make the street repair, the person opening the street will pay all costs of making such repair and of maintaining the same for one (1) year.
 - (2) Faulty work or materials shall be immediately replaced by the permittee upon notice by the City. Failure to correct deficiencies shall result in a one (1) year revocation of the right to obtain a street opening permit. The City shall repair the deficiencies and bill the permittee for all labor, materials and equipment used plus twenty percent (20%) for administration.
 - (3)
 - a. The person who does such restoration shall be responsible therefor for one (1) year from the date of the completion of the work.
 - b. Before permission shall be granted, the applicant shall deposit with the City Treasurer to insure performance of restoring such streets and terraces to their original conditions the sum to be determined as follows:
 - 1. If the street in such excavation is surfaced with portland cement concrete, the sum of Two Hundred Dollars (\$200.00).

2. Dirt or gravel, the sum of Fifty Dollars (\$50.00).
3. All other roads, the sum of One Hundred Dollars (\$100.00).
4. Terraces, the sum of Thirty-five Dollars (\$35.00).
- c. In lieu and instead of the deposit required, any person may execute and file with the City Clerk, and keep in effect a surety bond in the sum of Ten Thousand Dollars (\$10,000.00), with a corporation surety conditioned upon the timely and faithful performance of all conditions prescribed by law and all laws and ordinances applicable in respect to all permits issued such person.
- d. Public utilities under the jurisdiction of the Public Service Commission doing work in the streets and terraces of the City of Menasha shall be exempt from filing such surety bond but their contractors or subcontractors shall not be excluded.
- (4) Whenever the Director of Public Works shall find that any such work has become defective within two (2) years of the date of completion, he shall give written notice thereof to the contractor or to his surety stating the defect, the work to be done, the cost thereof and the period of time deemed by the Director of Public Works to be reasonably necessary to complete said work. After receipt of such notice, the contractor or the surety must, within the time specified, repair the defect or indemnify the City for the cost of doing the work as set forth in the notice.
- (5) An annual bond may be given under this Section covering all excavation work done by the principal for one (1) year beginning January 1, which shall be conditioned as specified above and in the amount determined by the Common Council as necessary to adequately protect the public and the City.
- (g) (1) Any property owner may repair or replace his sidewalk or driveway approach provided that the work is done under the supervision of the Department of Public Works and that the provisions of Section 6-2-3 are complied with. Such owner must obtain a permit, but need not furnish a bond and insurance. The deposit provisions of 6-2-3(f)(3) will apply. Such deposit will be refunded upon final inspection by the City Engineering Department.
- (2) Any property owner may construct a new sidewalk or driveway approach provided that the work is done under the supervision of the Department of Public Works and that the provisions of Section 6-2-3 are complied with. Such owner must obtain a permit, but need not furnish a bond and insurance. The deposit provisions of 6-2-3(f)(3) will apply. Such deposit will be refunded upon final inspection by the City Engineering Department.

SEC. 6-2-4

REGULATIONS GOVERNING EXCAVATIONS AND OPENINGS.

- (a) **FROZEN GROUND.** No openings in the streets, alleys, sidewalks or public ways shall be permitted when the ground is frozen except where it is determined by the Director of Public Works to be an emergency excavation.
- (b) **NOTICES.**
 - (1) Notices to Fire, Police and Sheriff's Departments. The contractor shall give notice in writing to the Fire Department and Police Department at least three (3) days before excavating in or obstructing traffic on any City street. If on County Trunk Highways or State Trunk Highways, three (3) days written notice shall be given to the County Sheriff, County Highway Commissioner and State Highway Commissioner.

- (2) Notice to Utilities, City Bureaus and Governmental Units. The contractor shall notify all utilities, City bureaus and governmental units whose property may be affected by the contractor's operations at least three (3) days before breaking ground. The contractor shall not interfere with said property until the expiration of the time specified in said notice and then only by permission of the Director of Public Works, nor shall the contractor hinder or interfere with any person in the protection of such work, or with the operation of buses, at any time except with the permission of the Director of Public Works.
- (c) **PROTECTION OF EXISTING SURFACE.** Conduits or pipes installed under driveways, sidewalks, curbs or permanent pavements shall be augured or bored, except when permitted to do otherwise by the Director of Public Works or his authorized representative.
- (d) **REMOVAL OF PAVING.** In any opening or excavation all paving or ballasting materials shall be removed with the least possible loss of or injury to surfacing materials and together with the excavated materials from the opening shall be placed so as to cause the least practicable inconvenience to the public and permit free flow of water along gutters.
- (e) **PROTECTION OF PUBLIC.**
- (1) The contractor shall furnish and erect neat and substantial fences or barricades around roadway obstructions, shafts, trench crossings and other excavations as prescribed by law and as may be further required for the protection of the public and of the work. He shall supplement such protective fences or barricades by the use of acceptable lights and flags, watchmen, signs and other measures that may be necessary to afford proper and sufficient protection.
 - (2) Whenever the contractor shall have received a permit to work on any street, alley or public right-of-way open to travel, he shall immediately upon commencing work on such thoroughfare, furnish, erect and maintain substantial barricades across the property affected and shall furnish, post and maintain construction warning signs thereon. Detour signs, when required, shall also be posted and maintained at immediately adjacent street and alley intersections for the convenience and guidance of traffic. Flashing amber lights shall be mounted on all barricades placed within the roadway that are present at night or when visibility is poor.
 - (3) All barricades used by the contractor shall conform to Part VI of the Wisconsin Manual on Uniform Traffic Control Devices and shall have a readable name of the contractor along with the telephone number at which he or his responsible superintendent can be contacted.
 - (4) Any barricading or detouring for work performed in through streets shall be approved by the Director of Public Works and Chief of Police prior to commencement of work.
 - (5) Except by special permission from the Director of Public Works, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying nor left unfilled more than five hundred (500) feet from where pipe or conduit has been laid.
 - (6) All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of the work. Each person making such opening shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or his employees of any necessary precaution against injury or damage to persons, vehicles or property of any kind.
 - (7) Unless otherwise approved, a minimum of one (1) lane of traffic in each direction

shall be provided. Every effort shall be made on the part of the permittee to provide reasonable access to all properties adjacent to his project. In the event traffic is limited to less than one (1) lane in each direction, a flagman or temporary traffic control signal shall be provided so as to safely cycle traffic in each direction past the work area.

- (8) The permittee shall perform the work in such a manner so as not to disrupt the flow of traffic in the area or endanger the safety of workers or passersby. It shall be the responsibility of the permittee to prevent traffic backup during construction operation.
- (f) **SAFEGUARDING THE WORK AND THE WORK SITE.** Whenever, in the judgement of the City, the work and work site are not sufficiently safeguarded, the City may order additional protection or in the event that there is not sufficient time for the contractor to provide such safeguards, the City may have the work and work site safeguarded by others and charge the cost to the contractor.
- (g) **REPLACING STREET SURFACE.**
 - (1) In opening any public street, public alley, public sidewalk, public way, public easement, or public ground, the paving materials, sand, gravel and earth or other material moved or penetrated and all surface monuments or hubs must be removed and replaced as nearly as possible in their original condition or position and the same relation to the remainder as before. Any excavated material which in the opinion of the Director of Public Works is not suitable for refilling shall be replaced with approved backfill material. All rubbish shall be immediately removed.
 - (2) The Director of Public Works may order the permittee to remove and replace up to one (1) full lane width of pavement along the patched or excavated area. Special care shall be taken with concrete pavement to produce a vertical face on the existing concrete at the point of the saw cut to insure a full depth of concrete at the joint.
 - (3) In refilling the opening, the earth must be puddled or laid in layers not more than six (6) inches in depth and each layer rammed or tamped, or with the permission of the Director of Public Works flushed, to prevent after-settling. All excavations in any type roadway surface, sidewalk, apron or travel area shall be backfilled with approved granular material. "Blow sand" is not acceptable, and will be ordered removed at the contractor's expense.
 - (4) When performing trench construction, the permittee shall utilize trench protection practices, including sheathing, shoring and bracing, in accordance with regulations established by the Wisconsin Department of Industry, Labor and Human Relations. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. At no time shall the street pavement be permitted to overhang the excavation.
 - (5) The City may elect to have the opening for any street or sidewalk repaired by the City, in which case the cost of making such repair and of maintaining it for one (1) year shall be charged to the person making the street opening.
- (i) **BACKFILLING STANDARDS.**
 - (1) Jetted Backfill.
 - a. Trenches shall be settled by flooding with water after backfill has been placed. The hose shall have a diameter of two (2) inches and a minimum length of two-thirds (2/3) the depth of the trench to the top of the conduit. The sewer trench shall be at least six (6) inches lower than the surrounding terrain at the time of jetting. Insertions shall be made at five (5) foot intervals along the trench and jetted until water ponds on the trench surface.
 - b. The nozzle shall be inserted as far as possible without damaging the pipe

foundation. Depression caused by settling shall be filled by the contractor at his expense.

c. Water for jetting shall be furnished by the contractor at his expense.

- (2) **Tamped Backfill.** Where tamping is required, backfill material shall be placed in six (6) inch to twelve (12) inch layers from the top of the conduit and mechanically tamped prior to adding more fill. All fill shall be uniformly compacted to a dry density which is at least ninety percent (90%) of the maximum dry density for material used, as determined by laboratory compaction test at optimum moisture content. Compaction tests may be made in accordance with ASTM C-1557, Method D, at the expense of the City.
- (3) **Excavated Material Backfill.**
- a. Where excavated material is used for backfill, the contractor shall mechanically tamp the excavated backfill material in six (6) inch to twelve (12) inch layers or jet according to Subsection (i)(1) above.
- b. Trenches backfilled with excavated material during winter months shall be top dressed in spring after the frost has left the soil.
- (j) **BACKFILLING NOTICE.** The Director of Public Works shall be notified at least four (4) hours prior to backfilling and/or restoring the surface.
- (k) **VALIDITY OF PERMIT.** Unless the work shall be commenced within thirty (30) days of the issuance of the permit, the permit shall be void, and a new permit must be obtained and an additional fee charged. The Director of Public Works may extend the time limitation for good cause.
- (l) **EMERGENCY EXCAVATION.** In the event of an emergency any person, firm or corporation, owning or controlling any sewer, gas main, water main, conduit or other utility in or under any public street, alley easement, way or ground and his agents and employees may take immediate proper emergency measure to remedy dangerous conditions for the protection of property, life, health, or safety without obtaining an excavation permit, provided that such person, firm or corporation shall apply for an excavation permit not later than the next business day, shall notify the City Police Department immediately and shall not make any permanent repairs without first obtaining an excavation permit.
- (m) **SURFACING MAINTENANCE.** The permit holder shall be responsible for the excavation, and shall have the temporary patch in place within five (5) working days from the date of issuance of the permit, and in accordance with the requirements of Subsection (n). In the event the permit holder fails to comply with these patching requirements, the City will make one courtesy phone call to notify the permit holder of any deficiencies. Failure to correct any deficiencies by noon the following day will result in the City performing the necessary work and billing a rate pursuant to a schedule on file with the Director of Public Works. No further permits will be issued to such permit holders until such bills have been paid for. Normal maintenance of temporary patches will be done by the City at no charge to the permit holders. Where excessive settlement occurs, the permit holder will be notified to perform the necessary maintenance. If the repairs are not made in the time specified above, the City will do all necessary work and charge the permit holder as specified above.
- (n) **SURFACE REPAIR.**
- (1) **Grass, Terraces and Boulevard Areas.** The contractor shall be responsible for permanent repair to all grass surface areas including reseeding or sodding.
- (2) **Pavements, Sidewalks, Aprons, Etc.** The contractor at his expense shall cap the trench areas with three (3) inches of asphalt cold patch material on top of three-fourths (3/4) inch road stone which extends to the earth subgrade.
- (o) **SURFACE CUTTING.**

- (1) Concrete, Asphalt, Asphalt Over Concrete.
 - a. The extent of concrete removal within a given section of pavement is to be determined by a field evaluation of existing conditions, i.e., joints, structures, etc., thickness, reinforcing (if any), subsurface conditions and any other factors pertinent to making a sound engineering evaluation. Such evaluation shall be made by the Director of Public Works or his authorized representative.
 - b. All excavations in concrete or asphalt pavements will be saw-cut before final patching is completed. When a pavement breaker is used to break the pavement before excavation, the area must be outlined by holes drilled on approximately six (6) inch centers. Saw cutting not done by the permit holder will be done by the City when the final patch is made and included in the bill. If the concrete base is disturbed under the pavement adjoining the excavation, the City will remove asphalt surfacing to a solid base up to lines forming a neat geometric patch.
- (2) Graveled, Oiled and/or Road Mix Surfaces. Road surfacing cuts may be made by air hammer or hoe, the same size as excavations, and shall be straight and rectangular in shape.
- (3) Driveways and Sidewalks.
 - a. In concrete driveways, a minimum width of three (3) feet shall be removed. If the distance between the back of curb and the sidewalk is six (6) feet or less, the entire driveway shall be removed. All cuts shall be made with a concrete saw.
 - b. Driveway surfaces shall be restored to the original surface condition except in case of concrete or hot asphalt driveways or sidewalks. Permanent surfaces will be placed by the City and costs billed to the permit holder.
- (p) **CLEAN WORK SITE.** All areas shall be neatly maintained and clean during and after construction. Road surfaces shall be protected to prevent damage by construction machinery. Should the contractor fail to maintain an acceptable site, the City may order the necessary cleanup work to be done and bill the permit holder.
- (q) **COMPLETION NOTIFICATION.** When the work has been completed and the temporary patch is in place, the permit holder shall notify the Department of Public Works.
- (r) **PERMANENT SURFACE REPLACEMENT.**
 - (1) All permanent surfaces of concrete or hot asphalt will be installed by the City. Repairs will be made following one freeze-thaw cycle. The City will perform the repair work under an annual contract bid for the specific purpose of repairing various types of surface cuts, or with City forces.
 - (2) Costs of these repairs will be billed to the permit holders upon completion of the repair.
 - (3) The contractor shall notify the Department of Public Works at which time a representative of the Department will meet with the contractor to make and measure the area disturbed for billing purposes.
 - (4) A bill will then be prepared using the cost plus fifteen percent (15%) and sent to the contractor from the Finance Department. Payment of this bill shall relieve the contractor of his responsibility in the event of excessive settlement.
- (s) **BACKFILL AND CARE OF TERRACES.** When an excavation is made in a boulevard or terrace of the public right-of-way, the permittee shall backfill and tamp in layers not exceeding twelve (12) inches, and shall place a minimum of four (4) inches of good topsoil on the surface. The area shall be leveled to coincide with adjacent turf and shall be seeded

with a mixture and at a rate meeting the approval of the Director of Public Works. The terrace work shall be completed within two (2) weeks of the completion of the work except that the Department of Public Works Inspector may waive this requirement during the months of November through March. No further permit may be issued to anyone who has not completed this work in accordance with this Section.

- (t) **EXCAVATION IN NEW STREETS LIMITED.** Whenever the Common Council determines to provide for the permanent improvement or repaving of any street, such determination shall be made not less than thirty (30) days before the work of improvement or repaving shall begin. Immediately after such determination by the Common Council, the Director of Public Works shall notify in writing each person, utility or other agency owning or controlling any sewer, water main, conduit or other utility in or under said street or any real property abutting said street, that all such excavation work in such street must be completed within thirty (30) days. After such permanent improvement or repaving, no permit shall be used to open or excavate said street for a period of five (5) years after the date of improvement or repaving unless, in the opinion of the Director of Public Works, conditions exist which make it absolutely essential that the permit be issued. Every effort shall be made to place gas, electric, telephone and TV cable lines in street terraces.

SEC. 6-2-5 OBSTRUCTIONS AND ENCROACHMENTS.

- (a) **OBSTRUCTIONS AND ENCROACHMENTS PROHIBITED.** No person shall encroach for a period in excess of five (5) minutes, upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds, or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in Subsections (b) and (c) or where a permit shall first be obtained from the Police Department of the City. The Police shall designate the time and hour such obstruction can take place.
- (b) **EXCEPTIONS.** The prohibition of Subsection (a) shall not apply to the following:
- (1) Public utility encroachments duly authorized by State Law or by the Common Council.
 - (2) Goods, wares, merchandise or fixtures being loaded or unloaded which do not obstruct the width of a sidewalk by more than three (3) feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than three (3) hours.
 - (3) Temporary encroachments or obstructions authorized by permit under Section 6-2-6 of this Section pursuant to Sec. 66.045, Wis. Stats.
 - (4) Building materials for the period authorized by Section 6-2-6(d).
 - (5) Excavations and openings permitted under Sections 6-2-3 and 6-2-4 of this Code.
- (c) **REMOVAL BY CITY.** In addition to any other penalty imposed, if the owner or occupant of the premises maintaining a prohibited obstruction or encroachment shall refuse or neglect to remove such unlawful obstruction or encroachment after such notice from the Director of Public Works or Police Department to do so, it shall be the duty of the Director of Public or Police Department to remove such obstruction or encroachment and make return of the costs and expenses thereof to the City Clerk who shall enter such cost on the next annual tax roll as a special charge against the property abutting such obstructed sidewalk, and such sum shall be levied and collected as other special taxes against real estate.

SEC. 6-2-6 STREET PRIVILEGE PERMIT.

- (a) **WHEN REQUIRED.** Permits for the use of the streets, alleys, sidewalks or other public ways or places of the City may be granted to applicants by the Director of Public Works for the purpose of encumbering the street, alley, sidewalk or way with materials necessary in and about the construction or demolition of any building or structure, provided such applicant has complied with the other requirements of this Section and has obtained a building permit if required by this Code of Ordinances. The Director of Public Works may request advisory recommendations from the Chief of Police and Building Inspector prior to issuance of the permit. City officials may attach conditions to the permit.
- (b) **BOND.** No street privilege permit shall be issued until the applicant shall execute and file with the City Clerk proof of liability insurance coverage. The insurance coverage shall be an amount of not less than \$100,000 per occurrence and the policy shall specifically state that it includes coverage for the fixtures located on the City sidewalks, streets or other public ways. In addition, the City shall be identified as a third-party insured. The applicant shall agree to indemnify and save harmless the City from all liability for accidents or damage caused by reason of operations under said permit and will remove such encumbrance upon termination of the operations and will leave the vacated premises in a clean and sanitary condition and repair any and all damage to the streets, alleys, sidewalks or public property of the City resulting from such building or moving operations.
- (c) **FEE.** The fee for a street privilege permit shall be in the sum of Ten Dollars (\$10.00), plus any actual City costs.
- (d) **CONDITIONS OF OCCUPANCY.** The permission to occupy or obstruct the streets, alleys, sidewalks or public grounds is intended only for use in connection with the actual erection, alteration, repair, removal or moving of buildings or structures and shall be given upon the following terms and conditions and subject to revocation without notice by the Director of Public Works for violation thereof:
- (1) Such temporary obstruction shall cover not more than one-third (1/3) of any street or alley.
 - (2) Obstructions shall be sufficiently lighted at night so as to be in full view of the public from all directions.
 - (3) Sidewalk traffic shall not be interrupted, but temporary sidewalks of not less than four (4) feet in width guarded by a closed fence at least four (4) feet high on both sides may be maintained during the period of occupancy.
 - (4) The process of moving any building or structure shall be as continuous as practicable until completed and, if ordered by the Chief of Police and Director of Public Works, shall continue during all hours of the day and night.
 - (5) No building or structure shall be allowed to remain overnight on any street crossing or intersection or so near thereto as to prevent easy access to any fire hydrant.
 - (6) Buildings shall be moved only in accordance with the route prescribed by the Director of Public Works and Chief of Police.
 - (7) Upon termination of the work necessitating such obstruction, all parts of the streets, alleys, sidewalks or public grounds occupied under the permit shall be vacated, cleaned of all rubbish and obstructions and placed in a safe condition for public travel at the expense of the permittee.
- (e) **TERMINATION.** All street privilege permits shall automatically terminate at the end of three (3) months from the date of issuance unless an earlier termination date is specified thereon at the direction of the Director of Public Works.
- (f) **REMOVAL BY CITY.** In addition to any other penalty imposed, if the owner or occupant of the premises adjoining any lawfully obstructed sidewalk shall remove or neglect to

remove such obstruction within twenty-four (24) hours after such notice from the Director of Public Works to do so, it shall be the duty of the Director of Public Works to remove such obstruction and make return of the costs and expenses thereof to the City Clerk who shall enter such cost on the next annual tax roll as a special charge against the property abutting such obstructed sidewalk, and such sum shall be levied and collected as other special taxes against real estate.

State Law Reference: Section 66.045, Wis. Stats.

SEC. 6-2-7 SNOW AND ICE REMOVAL.

- (a) **REMOVAL FROM SIDEWALKS.** The owner, occupant or person in charge of any parcel or lot which fronts upon or adjoins any sidewalk shall keep said sidewalk clear of all snow and ice. In the event of snow accumulating on said sidewalk due to natural means and/or by any other means, said sidewalks shall be cleared of all accumulated snow and/or ice within twenty-four (24) hours from the time the snow ceases to accumulate on said sidewalk. Sidewalks are to be kept clear of snow and ice to a minimum of four (4) feet in width. In the event that ice has formed on any sidewalk in such a manner that it cannot be removed, the owner, occupant or person in charge of the parcel or lot which fronts upon or adjoins said sidewalk shall keep the sidewalk sprinkled with sand and/or salt to permit safe travel by pedestrians.
- (b) **NOTICE AND REMOVAL OF SNOW FROM SIDEWALKS.** If the owner, occupant or person in charge of any parcel or lot which fronts upon or adjoins any sidewalk shall fail to keep said sidewalk clear of snow and ice as set forth in Subsection (a), the Director of Public Works shall take the following action:
 - (1) Hazardous Conditions. If the Director of Public Works determines that the failure to remove the snow and ice from the sidewalk creates an immediate danger to the public health and/or safety, he shall cause the issuance of a written notice to the owner, occupant or person in charge of any parcel or lot directing that the snow and ice be removed within two (2) hours from the delivery of the notice. In the event the property owner, occupant or person in charge of said parcel or lot is unavailable to receive a written notice, the Director of Public Works shall immediately cause the removal of the snow and/or ice. The Director of Public Works shall send a written notice to the last-known address of the property owner notifying him that a hazardous condition existed which required immediately abatement.
 - (2) Non-Hazardous Conditions. If the owner, occupant or person in charge of the subject parcel or lot fails to remove the snow within the time period established in Subsection (a), the Director of Public Works shall cause the issuance of a written notice to said owner, occupant or person in charge of the subject parcel or lot directing the responsible person (as defined) to remove said snow and ice no later than twenty-four (24) hours following the issuance of said notice. The written notice shall be hand delivered when possible or mailed to the last-known address of the owner of the subject property as identified on the records in the City Clerk's office.
 - (3) Snow and Ice Not to Encroach. No person shall push, shove or in any way deposit any snow or ice onto any public streets, alley, sidewalk or public lands dedicated to public use except for parcel or lots located where existing buildings are constructed within five (5) feet of the street right-of-way and the sidewalks exist from the City right-of-way to the curb line. In such instances, the owners, occupants and/or

employees of parcels or lots shall be permitted to deposit snow and ice from their sidewalks onto the public streets.

- (c) **ENFORCEMENT.** The Director of Public Works, his designee and all sworn police officers are hereby authorized and directed to enforce the provisions of this Section.
- (d) **CONTINUED VIOLATIONS.** Each twenty-four (24) hour period where a violation occurs shall constitute a separate offense under this section for enforcement purposes. Repeated violations or subsequent additional accumulations of snow and/or ice shall not nullify any pending notice issued under this Section.
- (e) **ABATEMENT AFTER NOTICE.** Failure of the owner, occupant or person in charge of any parcel or lot to cause the removal of snow and/or ice within the time established under Subsection (b)(1) and (2) after receiving a written notice shall result in the Director of Public Works causing the removal of said snow and/or ice.
- (f) **EXPENSE.** An account of the expenses incurred by the City to abate the snow and/or ice hazard shall be kept and such expenses shall be charged to and paid by the parcel or lot owner. Notice of the bill for the removal of snow and/or ice shall be mailed to the last-known address of the owner of the parcel or lot and shall be payable within thirty (30) calendar days from the receipt thereof. Within sixty (60) days after such costs and expenses are incurred and remain unpaid, the City Comptroller shall enter those charges onto the tax roll as a special tax as provided by Section 66.615(5), Wis. Stats.
- (g) **PENALTY.** In addition to the provisions set forth in this Section, any person, firm or corporation which violates the provisions of this Section shall be subject to a penalty as provided in Section 1-1-7 of this Code of Ordinances.

State Law Reference: Sections 66.60(16) and 66.615(3)(f) and (5), Wis. Stats.

SEC. 6-2-8 VAULTS.

All new vaults shall be prohibited and existing vaults shall be maintained in conformance with this Section. All vaults under sidewalks in the City shall be constructed of brick, concrete block, or poured concrete. The surface opening into the street shall be within three (3) feet of the outer edge of the sidewalk, or the curb. The slab over such vault shall be able to withstand a load of two hundred fifty (250) pounds per square foot of slab area. The owner of any lot or parcel of land adjoining such vault shall maintain such vault and slab over in a safe condition and at his own expense.

SEC. 6-2-9 BOARD OF PUBLIC WORKS HOME RULE PROVISIONS.

The City of Menasha hereby elects pursuant to Chapter 66 of the Statutes of Wisconsin to provide that the actions of the Board of Public Works shall be subject to Council approval and mayoral veto.

SEC. 6-2-10 PLACING OF NUMBERS ON RESIDENCES AND PLACES OF BUSINESS.

- (a) Each house or place of business shall be assigned a numerical number.
- (b) It shall be the duty of the property owner to place such assigned number on each residence and place of business in the City, observable and readable with the naked eye from the street

- right-of-way.
- (c) Nothing in this Section shall prohibit numbers to be in script form in addition to the numerical numbers if the property owner desires.
 - (d) Upon certification to the City Clerk by the proper officials that residences and places of business are unnumbered, the City Clerk shall notify each property owner of the contents of this Section.

CHAPTER 3

Driveways

SEC. 6-3-1 DRIVEWAYS.

(a) **PERMIT REQUIRED.**

- (1) Purpose. For the safety of the general public, the City of Menasha shall determine the location, size, construction and number of access points to public roadways within the City limits, through the administration of this Section by the Director of Public Works. It is the City's intent to provide safe access to properties abutting public roadways suitable for the property to be developed to its highest and best use, provided that access is not deficient or dangerous to the general public.
- (2) Permit Requirements. Unless otherwise permitted by resolution of the Common Council, upon written application giving the reason therefor, no person shall construct, repair or reconstruct any driveway across or through any sidewalk or curbing without having first obtained a permit from the Building Inspector. The permit fee shall be recommended by the Director of Public Works to the Common Council. If the same is not amended by the Common Council, said fee shall stand. Recertification to the Common Council is not necessary in the following years and the fees remain unchanged. The original recommendation shall be to the Administration Committee.

(b) **INSTALLATION REQUIREMENTS.**

- (1) Street Openings. Openings for vehicular ingress and egress for residential properties shall be at least ten (10) feet wide at the property line but shall not exceed thirty-six (36) feet at the curb opening, unless such opening previously existed greater than thirty-six (36) feet, unless the Director of Public Works or his/her designee determines that it is appropriate for the driveway opening to be of a greater width.
- (2) Openings for vehicular ingress and egress for all nonresidential properties shall be at least sixteen (16) feet wide at the property line but shall not exceed thirty-six (36) feet at the curb opening, unless such opening previously existed greater than thirty-six (36) feet.
- (3) Exceptions.
 - a. Residential Properties. Requests for exceptions to Section 6-3-1(b)(1) shall be considered pursuant to Section 13-1-53.
 - b. Non-residential Properties. Requests for exceptions to Section 6-3-1(b)(2) shall be made in writing to the Director of Public Works. Any decision of the Director of Public Works may be appealed pursuant to Section 13-1-53.
- (4) Location. No driveway shall be closer than twenty (20) feet to the extended street line at an intersection or at a crosswalk. At street intersections, a driveway shall not provide direct ingress or egress to or from the street intersection area and shall not occupy areas of the roadway deemed necessary by the Director of Public Works for effective traffic control or for highway signs or signals. The location of driveway openings on adjacent parcels or lots shall be such that an unbroken space of curb of not less than four (4) feet is maintained between openings.
- (5) Drainage. No driveway apron shall extend out into the street farther than the facing of the curb and under no circumstances shall such driveway apron extend into any gutter area. All driveway entrances and approaches shall be so constructed as not to

interfere with the drainage of streets, side ditches or roadside areas or with any existing structure on the right-of-way.

- (6) Gutter Reconstruction. When a curb opening is to be made, the property owner shall remove the entire curb and gutter and construct a new gutter, unless the Director of Public Works or his/her designee determines reconstruction is unnecessary.
- (c) **PERMIT APPLICATIONS**. Permit applications shall be made at least twenty-four (24) hours in advance of intended installation but this shall not be deemed to be a limitation of time within which a permit must be granted, and the Building Inspector shall have such time as reasonably necessary for examination and consideration of any application before granting the permit.

SEC. 6-3-2 PERMITTEE LIABLE FOR DAMAGE OR INJURY.

The permittee shall assume all responsibility for any injury or damage to persons or property resulting directly or indirectly during construction or repair of driveway approaches or entrances. When curb or gutter is removed, the new construction shall be of equivalent acceptable material and curb returns provided or restored in a neat, workmanlike manner. Driveway surfaces shall connect with the street pavement and sidewalk in a neat, workmanlike manner.

CHAPTER 4

Trees and Shrubs

SEC. 6-4-1 STATEMENT OF POLICY AND APPLICABILITY OF CHAPTER.

- (a) **INTENT AND PURPOSE.** It is the policy of the City to regulate and establish policy for the control of planting, removal, maintenance and protection of trees and shrubs in or upon all public areas and terrace areas of the City to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks or other public areas; to promote and enhance the beauty and general welfare of the City; to prohibit the undesirable and unsafe planting, removal, treatment and maintenance of trees and shrubs located in public areas; and to guard all trees and shrubs both public and private within the City against the spread of disease, insects or pests.
- (b) **APPLICATION.** The provisions of this Chapter shall apply to trees and shrubs growing or hereafter planted in or upon public areas and terrace areas and also to all trees and shrubs growing or to be planted in or upon any private premises which shall threaten the life, health, safety or welfare of the public or of any public areas.

SEC. 6-4-2 DEFINITIONS.

Whenever the following words or terms are used in this Chapter, they shall be construed to have the following meanings:

- (a) **PERSON.** "Person" shall mean person, firm, association or corporation.
- (b) **PUBLIC AREAS.** "Public Areas" includes all public parks and other lands owned, controlled or leased by the City except the terrace areas.
- (c) **PUBLIC TREES AND SHRUBS.** "Public Trees and Shrubs" means all trees and shrubs located or to be planted in or upon public areas.
- (d) **PUBLIC NUISANCE.** "Public Nuisance" means any tree or shrub or part thereof which, by reason of its condition, interferes with the use of any public area; infected with a plant disease; infested with injurious insects or pests; injurious to public improvements or endangers the life, health, safety or welfare of persons or property.
- (e) **BOULEVARD OR TERRACE AREAS.** "Boulevard or Terrace Areas" means the land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area four (4) feet from the curb line shall be deemed to be a boulevard for the purpose of this Chapter. "Boulevard" shall have the same meaning as "terrace." Where there are only sidewalks, the area four (4) feet from the curb shall be deemed boulevard areas under this Chapter.
- (f) **MAJOR ALTERATION.** Trimming a tree beyond necessary trimming to comply with this Chapter.
- (g) **SHRUBS.** "Shrubs" shall mean any woody vegetation or woody plant having multiple stems and bearing foliage from the ground up.
- (h) **TREE.** "Tree" shall mean any woody plant, normally having one stem or trunk bearing its foliage or crown well above ground level to heights of sixteen feet or more.
- (i) **EVERGREEN TREE.** "Evergreen Tree" shall mean any woody plant normally having one stem or trunk and bearing foliage in the form of needles and crowns which extend from

- ground level throughout its entire height.
- (j) **FORESTER.** Person designated by the Common Council as authorized to carry out provisions of this Chapter.
 - (k) **CITY.** City of Menasha, Wisconsin.

SEC. 6-4-3 AUTHORITY OF CITY FORESTER TO ENTER PRIVATE PREMISES.

The Superintendent of Parks, Forestry and Cemeteries shall serve as City Forester and shall carry out the provisions of this Chapter under the direction of the Parks and Recreation Board.

- (a) He/she may designate a municipal employee to perform the duties of Forester under Chapter 27, Wis. Stats., and may authorize such Forester to perform the duties and exercise the powers imposed on the Common Council by this Chapter.
- (b) The City Forester or his/her authorized representative may enter upon private premises at all reasonable times for the purpose of examining any tree or shrub located upon or over such premises and carrying out any of the provisions of this Chapter.

SEC. 6-4-4 INTERFERENCE WITH THE CITY FORESTER PROHIBITED.

No person shall interfere with the City Forester or his authorized representative while they are engaged in carrying out any work or activities authorized by this Chapter.

SEC. 6-4-5 ABATEMENT OF TREE DISEASE NUISANCES.

- (a) **DUTCH ELM AND OTHER TREE DISEASES A PUBLIC NUISANCE.** Whereas the Common Council has determined that there are many trees growing on public and private premises within the City, the loss of which would substantially depreciate the value of public and private property, impair the use and enjoyment of public and private premises and erode the tax base of the City, and that the health and life of such trees is threatened by fatal diseases such as Dutch Elm Disease, which is spread by the elm bark beetles Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.), the Common Council hereby declares its intention to control and prevent the spread of tree diseases and the insect pests and vectors which carry such diseases. Contagious tree diseases are declared to be public nuisances.
- (b) **DEFINITIONS.** As used in this Section, unless otherwise clearly indicated by the context:
 - (1) "Public Nuisance" in this Chapter means:
 - a. Fatal or deleterious tree diseases.
 - b. Elm bark beetles Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.); Dutch Elm Disease.
 - c. Any living or standing elm tree or part thereof infected with the Dutch Elm Disease fungus or in a weakened condition which harbors any of the elm bark beetles, Scolytus multistriatus (Eichb.) or Hylurgopinus rufipes (Marsh.)
 - d. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and burned or sprayed with an effective elm bark beetle destroying concentrate.
 - e. Any tree or part thereof which by reason of its condition and location is

hazardous or dangerous to persons and property using or upon any public street, sidewalk, alley, park or other public or private place, including the terrace strip between curb and lot line.

f. Any tree or part thereof which is infested by the eastern tent caterpillar or other defoliating larvae.

(2) "Public property" means owned or controlled by the City, including without limitation because of enumeration, public sites, parks, playgrounds, streets, alleys, sidewalks, boulevards, and the terrace strip between the lot line and the curb or improved portion of any public way.

(3) "Person" means person, firm or corporation.

(c) **INSPECTION.**

(1) The City Forester shall inspect or cause to be inspected all premises and places within the City to determine whether any public nuisance exists thereon. He shall also inspect or cause the inspection of any elm tree reported or suspected to be infested with the Dutch Elm Disease or any elm bark bearing materials reported or suspected to be infested with elm bark beetles.

(2) Whenever necessary to determine the existence of Dutch Elm Disease or elm bark beetles in any tree, the person inspecting such tree shall remove or cut specimens from the tree in such manner as to avoid fatal injury thereto and deliver such specimens to the Forester who shall forward them to the Wisconsin Department of Agriculture at Madison for analysis to determine the presence of such nuisances.

(3) The Forester and his agents or employees shall have authority to enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this Section.

(d) **ABATEMENT OF NUISANCES; DUTY OF FORESTER.**

(1) The Forester shall order, direct, supervise and control the abatement of public nuisances as defined in this Section by spraying, removal, burning or by other means which he determines to be necessary to prevent as fully as possible the spread of Dutch Elm Disease fungus, other deleterious tree diseases or the insect pests or vectors known to carry such diseases.

(2) Whenever the Forester after inspection or examination shall determine that a public nuisance as herein defined exists on public property in the City, he shall immediately abate or cause the abatement of such nuisance in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm Disease, other deleterious tree diseases, or the insect pests or vectors known to carry such disease fungus.

(3) a. When the Forester shall determine with reasonable certainty that a public nuisance exists upon private premises, he shall immediately serve or cause to be served personally or by registered mail upon the owner of such property, if he can be found, or upon the occupant thereof, a written notice of the existence of such nuisance and of a time and place for a hearing, not less than fourteen (14) days after service of such notice, on the abatement action to be taken. Such notice shall describe the nuisance and recommend procedures for its abatement, and shall further state that unless the owner shall abate the nuisance in the manner specified in the notice, or shall appear at the hearing to show that such nuisance does not exist or does not endanger the health of trees in the City, the Forester shall cause the abatement thereof at the expense of the property served. If the owner cannot be found, such notice shall be given by publication in a newspaper of general circulation in the City.

b. If, after hearing held pursuant to this Subsection, it shall be determined by the

Common Council that a public nuisance exists, it shall forthwith order the immediate abatement thereof. Unless the property owner abates the nuisance as directed within five (5) days after such hearing, the Forester shall proceed to abate the nuisance and cause the cost thereof to be assessed against the property in accordance with the procedures provided in this Section. The Forester may extend the time allowed the property owner for abatement work but not to exceed ten (10) additional days.

(e) **SPRAYING.**

- (1) Whenever the Forester shall determine that any tree or part thereof is infected with a deleterious or fatal tree disease or is in a weakened condition or harbors elm bark beetles, he may cause all trees within a one thousand (1,000) foot radius thereto to be sprayed with an effective disease destroying concentrate or other insecticide.
- (2) In order to facilitate the work and minimize the inconvenience to the public of any spraying operations conducted under this Section, the Forester shall cause to be given advance public notice of such operations by newspaper, radio, television, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be sprayed at least twenty-four (24) hours in advance of spraying. When any residue or concentrate from municipal spraying operations can be expected to be deposited on any public street, the Forester shall also notify the Chief of Police, who shall take all necessary steps to make and enforce temporary parking and traffic regulations on such streets as conditions require. Temporary "no parking" notices shall be posted in each block of any affected street at least twenty-four (24) hours in advance of spraying operations.
- (3) When appropriate warning notices and temporary "no parking" notices have been given and posted in accordance with Subsection (b) of this Section, the City shall not allow any claim for damages to any vehicle caused by such spraying operations.
- (4) When trees on private property are to be sprayed, the Forester shall notify the owner of such property and proceed in accordance with the requirements of Subsection (d)(3).

SEC. 6-4-6

ASSESSMENT OF COSTS OF ABATEMENT.

- (a) The entire cost of abating any public nuisance, spraying trees or trimming trees located on public property shall be borne by the City.
- (b) The cost of abating a public nuisance or spraying elm trees or elm wood located on private premises when done at the direction and under the supervision of the Forester shall be assessed to the property on which such nuisance, tree or wood is located as follows:
 - (1) The Forester shall keep a strict account of the cost of such work or spraying and the amount chargeable to each lot or parcel and shall report such work, charges, description of lands to which charged and names and addresses of the owners of such lands to the Common Council on or before October 15 of each year.
 - (2) Upon receiving the Forester's report, the Council shall hold a public hearing on such proposed charges, giving at least fourteen (14) days' advance notice of the time, place and purpose of such hearing to interested persons by publication in a newspaper of general circulation in the municipality and by mail to the owner of each property proposed to be charged. Each property owner shall be notified of the amount proposed to be assessed against his premises and the work for which such charge is

- being made.
- (3) After such hearing, the Common Council, upon the recommendation of the Parks and Recreation Board, shall affirm, modify and affirm or disapprove such assessments by resolution and shall cause a copy thereof to be published. Upon adoption and publication of such resolution, assessments made thereby shall be deemed final.
 - (4) The City Comptroller shall mail notice of the amount of such final assessment to each owner of property assessed at his last-known address, stating that, unless paid within thirty (30) days of the date of the notice, such assessment will be entered on the tax roll as a tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such assessment.
 - (5) The City hereby declares that, in making assessments under this Section, it is acting under its police power, and no damages shall be awarded to any owner for the destruction of any diseased or infested tree or wood or part thereof.

SEC. 6-4-7 PERMIT FOR PLANTING, MAINTENANCE AND REMOVAL OF TREES AND SHRUBS.

- (a) **PERMIT REQUIRED.** No person, except upon order of the City Forester, shall plant or remove, or perform major alterations as determined by the Forester on a tree or shrub in the public right-of-way terrace area or cause such act to be done by others without first obtaining a written permit for such work from the City Forester as herein provided. Such planting permit must be obtained from the City Forest at least five (5) days prior to the planting. The applicant shall comply with the planting standards of Sec. 6-4-8.
- (b) **PERMIT EXEMPTIONS.** No permit shall be required to cultivate, fertilize or water trees or shrubs or for work by City personnel on park properties. No permit is necessary to plant trees inside the property line.
- (c) **PERMIT REQUIREMENTS AND CONDITIONS.** If the City Forester determines that the proposed work or planting described in an application for a permit is necessary and in accord with the purposes of this Chapter, taking into account the safety, health and welfare of the public, location of utilities, public sidewalk, driveways and street lights, general character of the area in which the tree or shrub is located or proposed to be located, type of soil, characteristics and physiological need of the genus, species and variety of tree and shrub, he shall have the Forester issue a permit to the applicant. The applicant must contact Digger's Hotline for location of all utilities prior to planting.
- (d) **PERMIT FORM; EXPIRATION; INSPECTION.** Every permit shall be issued by the City Forester on a standard form and shall include a description of the work to be done and shall specify the genus, species and variety, size and location of trees or shrubs to be planted, if any. Any work under such permit must be performed in strict accordance with the terms thereof and the provisions of this Chapter. Permits issued under this Section shall expire six (6) months after date of issuance. There will be no charge for this permit.
- (e) **PERMITS TO PUBLIC UTILITIES.**
 - (1) Whenever a permit is issued under this Section to a public utility to remove, trim, prune, cut, disturb, alter or perform surgery on any public tree or shrub, the City Forester or his/her designee shall limit any such work in his/her discretion.
 - (2) A public utility may secure an annual working agreement with the City Forester's office which gives the City Forester the authorization to supervise and direct work

associated with trees and shrubs.

SEC. 6-4-8 PLANTING OF TREES AND SHRUBS.

- (a) **PURPOSE.** The Common Council hereby states its determination that the planting, care and protection of the trees within the City is desirable for the purposes of beauty, shade, comfort, noise abatement and economic betterment, and hereby encourages all persons to assist in a program of tree planting, care and protection.
- (b) **TREE PLANTING PROGRAM.** The City Forester shall recommend to the Common Council a program for tree planting, care and protection for public parks. The Council shall also encourage the planting, care and protection of trees and shrubs on private premises within the City.
- (c) **PLANTING.**
 - (1) The size and genus, species and variety of trees and shrubs to be planted in public areas and boulevards and the manner of planting shall be submitted to the City Forester for approval before commencement of such work. The permit application process is required in Section 6-4-7.
 - (2) There shall be a minimum distance of thirty (30) feet and a recommended distance of thirty-five (35) to fifty (50) feet between terrace area trees depending upon the size of tree and other factors. Terrace trees shall be planted equal distance between the sidewalk or proposed sidewalk and back of the curb or proposed back of curb. In terrace areas less than three (3) feet wide, planting will not be permitted. Terrace area trees shall be a minimum of twenty-five (25) feet from an intersection.
 - (3) Evergreen trees shall not be planted in a terrace area.
 - (4) It shall be unlawful to plant or maintain shrubbery, ground cover or other plants not considered to be a deciduous leaf tree within terrace areas whose growth is in excess of eight (8) inches in height above the top of the nearest curb. If deemed appropriate, the City Forester may waive this requirement.
 - (5) Tree grates shall be provided for terrace trees surrounded by concrete by the adjacent property owner and shall be level with adjacent concrete.
- (d) **UNLAWFULLY PLANTED TREES.** Trees, plants or shrubs planted within any terrace or planting easement without the authorization and approval of the Forester may be removed. The Forester shall notify the abutting owner in writing, listing the unlawfully planted trees, plants or shrubs, order their removal, and establishing a reasonable time within which such removal shall be accomplished. In the event that removal is not to be accomplished within the time specified, the City may remove such trees, plants or shrubs and assess the costs thereof to the owner.
- (e) **FRAMES.** Any person, adjacent to whose land any shade or ornamental tree or shrub is growing in any street, may, for the purpose of protecting such tree or shrub, surround the same with a suitable box or frame for protection, but all such work shall be performed under the supervision and direction of the City Forester.

SEC. 6-4-9 TRIMMING.

- (a) Trees and shrubs standing in or upon any boulevard, public area or upon any private premises adjacent to any public right-of-way or public areas shall be kept trimmed so that the lowest branches projecting over the public street or alley provide a clearance of not less than

fourteen (14) feet. Such trimming may only be done by City employees or authorized persons under contract with the City. The City Forester may waive the provisions of this Section for newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any street light or endanger public safety.

- (b) The necessity of the pruning may be determined by the City Forester.
- (c) Clearance from sidewalk to lower branches shall not be less than eight (8) feet. All trees standing upon private property in the City, the branches of which extend over the line of the street, shall be trimmed so that no branch shall grow or hang over the line of the sidewalk lower than eight (8) feet above the level of the sidewalk. No tree shall be permitted to grow in such a manner as to obstruct the proper diffusion of light from any public lamp. All private trees must maintain a minimum clearance of fourteen feet above any public street or any private road serviced by any municipal vehicles. Low growing trees, such as crabapples, shall be trimmed within the confines of the terrace.

SEC. 6-4-10 TREES AND SHRUBBERY OBSTRUCTING VIEW AT INTERSECTION OR VIEW OF TRAFFIC SIGNS.

(a) **OBSTRUCTION BY TREES, SHRUBS, FENCES, WALLS, SIGNS OR OTHER
STRUCTURES.**

- (1) Prohibited Obstructions. No person shall maintain trees, shrubs, fences, walls, signs, or other structures in the vision control area which obstruct the necessary view of the driver of a motor vehicle on a public street or private driveway or which interfere with the driver's control. The vision control area is defined as the minimum sight triangle for the appropriate intersection/driveway set of conditions, as established by the current effective AASHTO sign distance references. In said vision control area, fences, walls, signs, or other structures shall not exceed three (3) feet in height and shall be two-thirds (2/3) open to vision equally distributed throughout the vision control area. In the vision control area, trees and shrubs shall be maintained to provide unobstructed vision from two and one-half (2-1/2) feet above the centerline of the abutting pavement to ten (10) feet above the said centerline elevation.
- (2) Duties of the Director of Public Works. It shall be the duty of the Director of Public Works or his representative to enforce this Section by appropriate order giving the offending party thirty (30) days to remove or correct the situation. Said order shall be served by certified mail. Where the home is in joint tenancy, service on one (1) of the homeowners shall be presumed service on the other.
- (3) Appeals of Orders of the Director of Public Works. All appeals of orders issued by the Director of Public Works shall be made within fifteen (15) days of the service of the order and shall be addressed to the City Clerk and the matter heard by the Board of Public Works.

- (b) **OTHER OBSTRUCTIONS.** It is unlawful for any person to plant, cause to grow, allow to grow or maintain any trees, bushes, shrubbery or vegetation of any kind which is an obstruction to the clear and complete vision of any traffic sign or driveway approach to a street in the City.
- (c) Any shrub, tree or other plant which obstructs the view at an intersection or the view of a traffic sign shall be deemed to be dangerous to public travel and the City Forester may order, by written notice, the owner or occupant of any private place or premises on which there stands a tree or shrub which unreasonably interferes with or encroaches upon the street or sidewalk, to take such steps as are necessary to remove such interference. If such owner or

occupant fails, within ten (10) days of receipt of notice, to take such necessary steps, the Director of Public Works shall order the City employees to remove the interference. The cost of removing the interference shall be levied and collected as a special tax upon the property upon which or in front of which such tree or shrub stands.

- (d) Any person who is an owner or occupant or firm or corporation failing to obey the written notice of the Director of Public Works as specified in Subsection (c) above shall, upon conviction thereof, be subject to a forfeiture as established in Section 1-1-7 of this Code of Ordinances.

SEC. 6-4-11 PROHIBITED ACTS.

- (a) **DAMAGE TO PUBLIC TREES.** No person shall, without the consent of the owner in the case of a private tree or shrub, or without written permits from the City Forester in the case of a terrace-area tree, public tree or shrub, perform or cause to be performed by others any of the following acts:
 - (1) Secure, fasten or run any rope, wire sign, unprotected electrical installation or other device or material to, around or through a tree or shrub.
 - (2) Break, injure, mutilate, deface, kill or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
 - (3) Permit any toxic chemical, gas, smoke, oil or other injurious substance to seep, drain or be emptied upon or about any tree or shrub or place cement or other solid substance around the base of the same.
 - (4) Remove any guard, stake or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water and fertilizer.
 - (5) Attach any sign, poster, notice or other object on any tree, or fasten any guy wire, cable, rope, nails, screws or other device to any tree; except that the City may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work or parades.
 - (6) Cause or encourage any fire or burning near or around any tree.
- (b) **EXCAVATIONS.** All trees on any parkway or other publicly owned property near any excavation or construction of any building structure or street work shall be sufficiently guarded and protected by those responsible for such work as to prevent any injury to said trees. No person shall excavate any ditches, tunnels or trenches, or install pavement within a radius of ten (10) feet from any public tree without a permit from the City Forester.
- (c) **REFUSAL TO ABATE NUISANCE.** Permits any public nuisance to remain on any premises owned or controlled by him when ordered by the Forester to abate such nuisance.

SEC. 6-4-12 APPEAL FROM DETERMINATIONS OR ORDERS.

Except as provided in Section 6-4-10, any person who receives a determination or order under this Chapter from the City Forester and objects to all or any part thereof shall have the right to appeal such determination or order, pursuant to the provisions of Title 4 of this Code of Ordinances and Chapter 68, Wis. Stats., to the Common Council within seven (7) days of receipt of the order and the Common Council shall hear such appeal within thirty (30) days of receipt of written notice of the appeal. After such hearing, the Common Council may reverse, affirm or modify the order or determination appealed from and the grounds for its decision shall be stated in writing. The

Common Council shall, by letter, notify the party appealing the order or determination of its decision within ten (10) days after the hearing has been concluded. The Council shall file its written decision with the City Clerk.

SEC. 6-4-13 ADOPTION OF STATE STATUTES.

Sections 27.09 and 86.03, Wis. Stats., are hereby adopted and incorporated herein by reference.

State Law Reference: Sections 27.09 and 86.03, Wis. Stats.

CHAPTER 5

City of Menasha Official Map

SEC. 6-5-1 CITY OF MENASHA OFFICIAL MAP

- (a) **AUTHORITY.** In accordance with the authority granted by Section 62.23(b) of the Wisconsin Statutes, the Common Council hereby establishes an official map. Such map shall bear the title "City of Menasha Official Map" and a certified copy shall be kept on file in the City Clerk's office.
- (b) **INTENT.** The official map is declared to be established to conserve and promote the public health, safety, convenience, or general welfare.
- (c) **JURISDICTION.** The official map shall apply to all areas within the City of Menasha and within extraterritorial areas as authorized by Section 62.23(b)(e) of the Wisconsin Statutes.
- (d) **COMPLIANCE.**
 - (1) Plat and Certified Survey Map Approval. No subdivision plat or certified survey map shall be approved unless such plat or CSM conforms to the official map.
 - (2) Public Utilities and Improvements. No public sewer or other municipal street utility or improvement shall be constructed in any street, highway or parkway until such street, highway, or parkway is duly placed on the official map. Where the enforcement of the provisions in this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways, or parkways, the applicant for such a permit may appeal from the decision of the Community Development Director to the Board of Appeals using the procedures established under Sec.6-5-1(d)(3)(a)(2). The board may in passing on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway, or parkway layout.
 - (3) Permit Required for Construction of Buildings. Any person desiring to construct or enlarge a building within the limits of a street, highway, railroad right-of-way, public transit facility, or parkway so shown within the corporate limits of the city or within the extraterritorial jurisdiction as provided in Section 236.10(1)(b)2 of the Wisconsin Statutes may apply to the City of Menasha Community Development Director for a building permit. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction of the street, highway, railroad right-of-way, public transit facility, or parkway shown on the official map. Unless an application is made, and the building permit granted or not denied with 30 days, the person is not entitled to compensation for damage to the building in the course of construction or alteration of the waterway shown on the official map within the incorporated limits of the municipality.
 - a. Appeal.
 - 1. If the land within the mapped street, highway, waterway, railroad right-of-way, public transit facility, or parkway is not yielding a fair return, the Zoning Board of Appeals may, by the vote of a majority of its members, grant a permit for a building or addition in the path of the street, highway, waterway, railroad right-of-way, public transit facility, or parkway which will as little as practicable increase the

cost of opening the street, highway, waterway, railroad right-of-way, public transit facility, or parkway or tend to cause a change of the official map. The board may impose reasonable requirements as a condition of granting the permit to promote the health, convenience, safety, or general welfare of the community. The board shall refuse a permit where the applicant will not be substantially affected by not constructing the addition or by placing the building outside the mapped street, highway, waterway, railroad right-of-way, public transit facility, or parkway.

2. Before taking any action authorized in this subsection, the Board of Appeals shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days before the hearing, notice of the time and place of the hearing shall be published as class 1 notice, under ch. 985. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.

- (e) **CHANGES AND AMENDMENTS.** The Common Council may, whenever and as often as it may deem necessary for the public interest and after a public hearing as provided in Section 62.23(b)(c) of the Wisconsin Statutes, change or add to the official map of the city so as to establish the exterior line of planned new streets, highways, and parkways, or to widen, narrow, extend, or close existing streets, highways, and parkways.
- (f) **REGISTRATION.** The City Clerk shall file with the register of deeds of Winnebago County and Calumet County certificates showing that the city has established an official map, and shall do likewise as to any changes or additions.